

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11836-RCL

TRANS-SPEC TRUCK SERVICE, INC.)
d/b/a TRUCK SERVICE,)
Plaintiff)

vs.)

CATERPILLAR INC.)
Defendant)

**PLAINTIFF, TRANS-SPEC TRUCK SERVICE INC., d/b/a TRUCK SERVICES,
AMENDED ANSWERS TO CATERPILLAR INC.'S
FIRST SET OF INTERROGATORIES**

The plaintiff, Trans-Spec Truck Service, Inc. ("Trans-Spec") answers the below interrogatories as follows:

GENERAL OBJECTIONS OF SPECIFIC APPLICABILITY

1. These answers to interrogatories are qualified by the objections specifically asserted herein and the answers do not constitute a waiver of any objection asserted.
2. Trans-Spec reserves the right to supplement these responses in a timely manner.

INTERROGATORIES

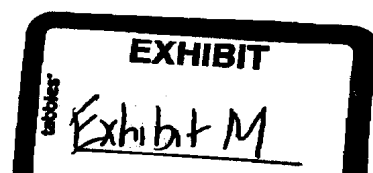
INTERROGATORY NO. 1

Identify every person whom you expect to offer expert testimony on your behalf at trial and, as to each such person, state the subject matters on which he or she will testify, state the substance of the facts and opinions to which he or she will testify, and summarize the grounds for each opinion to which he or she will testify.

ANSWER NO. 1

Trans-Spec has not determined which experts, if any, it will call at trial and reserves the right to supplement this answer in a timely fashion.

J. E.



INTERROGATORY NO. 10

Describe comprehensively and in detail the basis for your contention that Trans-Spec's purported claim to recover incidental and consequential damages, damages for loss of use, and costs of additional service employees [as to which see ¶42 of the amended complaint] is not barred by the exclusion of incidental and consequential damages contained in the written warranties Caterpillar gave with respect to the engines and in the extended service contract of which a copy is attached as Exhibit C to the amended complaint.

ANSWER NO. 10

Trans-Spec objects to this interrogatory as it poses a question of law. Without waiving and subject to this objection, Trans-Spec states that on multiple occasions, Caterpillar orally waived any such exclusion, including during meetings with Trans-Spec on June 9, 2004 and in or around August 2004.

On June 9, 2004, Cardoza orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005. Guidotti also attended this meeting, which was held at Milton-CAT's facility in Milford, Massachusetts; was present at Cardoza's representation; and, agreed with it. Guidotti further represented that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole.

In August 2004, Schoening again orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005 at a meeting with Howard and Barton held at Milton-CAT's facility in Milford, Massachusetts. Schoening reiterated Guidotti's representation at the June 9, 2004 meeting that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole. Cardoza attended this meeting.

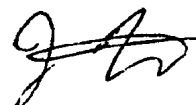
Additionally, Calderbank and Cardoza have made "off the record" representations to Trans-Spec that Trans-Spec would be made whole for the damage it has suffered as a result of the defective C-12 engines.

INTERROGATORY NO. 11

Describe comprehensively and in detail the basis for your contention that Trans-Spec's purported claim for alleged breaches of implied warranties are not barred by the disclaimers of all implied warranties contained in the written warranties Caterpillar gave with respect to the engines and in the extended service contract of which a copy is attached as Exhibit C to the amended complaint.

ANSWER NO. 11

Trans-Spec objects to this interrogatory as it poses a question of law. Without waiving and subject to this objection, Trans-Spec states that on multiple occasions, Caterpillar orally waived any such exclusion, including during meetings with Trans-Spec on June 9, 2004 and in or around August 2004.



On June 9, 2004, Cardoza orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005. Guidotti also attended this meeting, which was held at Milton-CAT's facility in Milford, Massachusetts; was present at Cardoza's representation; and, agreed with it. Guidotti further represented that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole.

In August 2004, Schoening again orally extended Caterpillar's warranty on the Trans-Spec C-12 engines until June 21, 2005 at a meeting with Howard and Barton held at Milton-CAT's facility in Milford, Massachusetts. Schoening reiterated Guidotti's representation at the June 9, 2004 meeting that the problems with the C-12 engines were not Trans-Spec's fault and that Caterpillar would make Trans-Spec whole. Cardoza attended this meeting.

Additionally, Calderbank and Cardoza have made "off the record" representations to Trans-Spec that Trans-Spec would be made whole for the damage it has suffered as a result of the defective C-12 engines.

INTERROGATORY NO. 12

Describe with specificity the "particular purpose" for which you allege Caterpillar impliedly warranted the engines would be suitable, and describe comprehensively and in detail all documents and other information Caterpillar had when it contracted with Sterling to sell Sterling the engines that (a) gave it reason to know of that particular purpose and (b) gave it reason to know Sterling was relying on Caterpillar's skill or judgment to select or furnish engines that were suitable for that particular purpose.

ANSWER NO. 12

Trans-Spec objects to this Interrogatory in that it cannot make any representations as to what documents Caterpillar received from Sterling nor can Trans-Spec make representations regarding the contents of Caterpillar's files. Without waiving and subject to this objection, Trans-Spec states that it is a common carrier for hire, regulated by the Department of Transportation, in the business of transporting general commodities and bulk items including but not limited to oil, aggregate, processed materials, petroleum, and liquid asphalt. Caterpillar warranted that the engines would be suitable for these particular purposes. Caterpillar was well acquainted with Trans-Spec's business, applications, and services due to an ongoing business relationship between the two companies dating back to 1986. From that time, Caterpillar wanted to sell engines to Trans-Spec and Trans-Spec obliged them for fourteen years.

Caterpillar further learned about Trans-Spec's business operations because Trans-Spec purchased the first FLC112 Freightliner truck that had a Caterpillar 3176 engine integrated into it. Trans-Spec agreed to let Caterpillar conduct performance testing on this truck, as part of its research for future development, in 1991-1992. Cardoza attended these tests.

Additionally, Caterpillar learned about Trans-Spec's business operations through its close contact with Trans-Spec personnel as part of its ongoing business relationship with Trans-Spec. For example, in or around 1996, Caterpillar invited and paid for Lind to attend the introduction

04/11/2006

CERTIFIED ORIGINAL
LEGALINK BOSTON

VOLUME: I

PAGES: 1 - 120

EXHIBITS: See Index

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

----- X
TRANS-SPEC TRUCK SERVICE, INC.,
d/b/a TRUCK SERVICE,

Plaintiff,

vs.

Civil Action No.
04-CV-11836-RCL

CATERPILLAR, INC.,

Defendant.
----- X

DEPOSITION OF KEVIN G. HOLMES
Monday, April 11, 2005, 9:00 a.m.
Tri State Trucking Center, Inc.
411 Hartford Turnpike
Shrewsbury, Massachusetts 01545

Reporter: Deborah L. Maren, RPR
Legalink Boston
320 Congress Street, Boston, MA 02210
(617)542-3500

Legalink Boston
(800) 822-3376

EXHIBIT

Exhibit N

04/11/200

80

1 A. Al Cardoza has been giving us specifics as
2 to what he requests us to do with these engines.

3 Q. What have those specifics been? What has
4 he been telling you to do with the engines?

5 A. Either replace the flywheel housing or
6 repair the front engine cover leaks.

7 Q. How would you repair the front engine cover
8 leaks? Has he been giving you specifics to repair it?
9 Or is there just a set procedure for doing so?

10 A. Actually, there are set procedures that are
11 obviously there. And obviously we have to follow those.

12 Q. Has he been telling you to patch any of the
13 engines or flywheel housings or flywheel housing bolts
14 or any components?

15 A. There was a unit here, yes, that was
16 patched.

17 Q. Is patching sufficient for these types of
18 problems that you've been seeing in Trans-Spec's C-12
19 engines?

20 MR. GRUNERT: Object to the form.

21 A. Unfortunately so, not in the engine that
22 was here, no.

23 Q. Do you know why Al Cardoza told you to
24 simply patch the engine?

1

A. Specifically, no, I don't. Obviously, I'm
sure, from a cost standpoint, yes.

2

3

Q. Was it obvious that patching wouldn't be
sufficient to make this repair on this engine?

4

5

A. For the vehicle's longevity, yes.

6

Q. Why?

7

A. Because a piece of the engine block was
broken.

8

9

Q. How did Al Cardoza tell Tri State to patch
the engine block?

10

11

A. He said to put the piece back on and epoxy
it.

12

13

Q. How long did it last? Do you know?

14

A. Unfortunately so, I don't know that now. I
believe that's, you know, a vehicle that has not been
back here so I would not know that.

15

16

17

Q. Did you or -- do you know if the person who
was dealing with this particular engine from Tri State,
did that person voice any concern with Al Cardoza
regarding the insufficiency of that patching?

18

19

20

21

A. I believe there were pictures taken and
all, yes.

22

23

Q. Do you have those pictures?

24

A. Unfortunately so, I don't personally. But

04/11/2006

82

1 I do believe there is a disk, yes.

2 Q. Okay. You said that cost consideration was
3 a factor, you thought, in that decision. Could you
4 explain what you meant by that?

5 A. Again, an engine bell housing or flywheel
6 housing repair would be in the vicinity of maybe \$3,000,
7 \$3500 between parts and labor, as opposed to an engine
8 replacement which would be in excess of \$20,000.

9 Q. How much would patching cost?

10 A. Again, the patching would encompass --
11 probably be about that 32 to \$3500.

12 Q. Okay. From what you've seen, is there a
13 permanent fix for Trans-Spec's types of problems with
14 the engines?

15 MR. GRUNERT: Object to the form and competence.

16 A. Other than replacement, as I mentioned
17 earlier, no.

18 Q. Okay. Does Caterpillar ever authorize a
19 dealer such as Tri State to make a repair pursuant to a
20 warranty and then subsequently refuse to pay it?

21 A. Yes.

22 Q. Could you tell me about that.

23 A. Actually, we've -- we have had claims that
24 we have been authorized to perform and we do get charged

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSTRANSCOPE TRUCK SERVICE, INC.
vs. TRANSCOPE TRUCK SERVICE, INC.

Plaintiff

vs. TRANSCOPE TRUCK SERVICE, INC.

Defendant

CIVIL ACTION NO. 04-11836-RCL

INDIVIDUAL DEPOSITION OF ROBERT G.

BARTON, JR., A WITNESS called on behalf of the
Defendant, pursuant to Federal Rules of Civil
Procedure, before Carolyn J. Rogers, Certified
Shorthand Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Office of
CAMPBELL CAMPBELL EDWARDS & CONROY, One Constitution
Place, Boston, Massachusetts, on TUESDAY, MAY 17,
2005, commencing at 9:30 a.m.

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Andover, Massachusetts 01810
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APPEARANCES:

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On Behalf of the Defendant Caterpillar, Inc.

CHRISTIAN G. SAMITO, ESQUIRE
Donovan Hagan LLP
Two Seaport Lane
Boston, MA 02210
(617) 400-4000/FAX (617) 400-4501
On Behalf of the Plaintiff
Trans-Spec Truck Service, Inc.

ALSO PRESENT:

William Barton, Videographer
In-Court Technologies

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DEFENDENT	EXAMINATION BY	PAGE NO.
Robert G. Barton, Jr.	(Mr. Grunert)	4, 170
	(Mr. Samito)	145, 194

EXHIBITS

NO.	DESCRIPTION	PAGE NO.
1	Photocopy of Electronic Calendar	12
2	Flysheet Showing Repairs 2002-2004	18
3	Color Copies of Photographs	62
4	Photocopies of Photographs	134
5	Photocopies of Photographs	136
6	Color Copies of Photographs	146

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PROCEEDINGS

MR. GRUNERT: The witness is going to read
and sign the transcript under the pains and penalties
of perjury, but notarization of the signature is
waived. Objections except as to the form of the
question are reserved until the time of trial, and
motions to strike are reserved until the time of
trial.

THE VIDEOGRAPHER: We are now on the
record. The date is May 17, 2005. The time is
approximately 9:34 a.m. We are located in the
offices of Campbell, Campbell, Edwards and Conroy in
Boston, Massachusetts. The defendant in the case of
Trans-Spec Truck Services, Incorporated versus
Caterpillar, Incorporated, Civil Action No.
0411836RCL, will take the audiovisual deposition of
Mr. Robert Barton. My name is William Barton, no
relation to the defendant, of In-Court Technologies,
Boston, Massachusetts, and I am the videographer for
this deposition. The stenographer is Carolyn J.
Rogers of C. J. Reporting. At this time the
attorneys will introduce themselves for the record.

MR. GRUNERT: My name is John Grunert of
the firm of Campbell, Campbell, Edwards and Conroy.

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I represent the defendant Caterpillar, Inc.

MR. SAMITO: Christian G. Samito of the
firm Donovan and Hatem, representing Mr. Barton and
Trans-Spec Truck Service, Inc.

THE VIDEOGRAPHER: The stenographer will
now swear in the witness.

ROBERT G. BARTON, JR.,
a witness called on behalf of the Defendant, having
first been satisfactorily identified by the
production of his driver's license and duly sworn by
the reporter/notary public, testifies and says as
follows:

DIRECT EXAMINATION

BY MR. GRUNERT:

Q. State your full name for the record,
please?

A. Robert G. Barton, Jr..

Q. What is your date of birth, Mr. Barton?

A. 1/1/49.

Q. Where do you live?

A. 89 Central Street, West Boylston,
Massachusetts.

Q. Are you married?

A. Yes.

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Q. Do you have children?

A. Yes.

Q. Are you employed by Trans-Spec Truck
Service, Inc.?

A. Yes, I am.

Q. How long have you been employed by
Trans-Spec?

A. Since October of 2003.

Q. Who was your employer before October of
2003?

A. Santa Fuel.

Q. What was the first name?

A. Santa.

Q. As in Santa Claus?

A. As in Santa Claus.

Q. Gotcha.

A. Bridgeport, Connecticut.

Q. Is Santa Fuel -- or was Santa Fuel owned
or affiliated in any way with Joseph Howard?

A. No.

Q. Was it affiliated in any way with
Trans-Spec?

A. No.

Q. Is it accurate that you played no role in

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EXHIBIT

Exhibit 10

A. (Witness nods head.)

Q. And did you receive a personal response or was it an automated response?

A. I received a response that someone from Southworth-Milton would be in touch with me.

Q. And then who responded from Southworth-Milton?

A. I received an e-mail from Jim Withrow from Southworth-Milton. Prior to that, I called Al Cardoza about it, and Al Cardoza told me the program no longer existed. And then I then -- the next day I received an e-mail from Jim Withrow explaining to me they have what's called an Advantage program for an additional 250,000 miles, or 200 miles.

Q. The next entry, "Freightliner re 7400 doing front structure first." Does that mean 7400 was still at Tri State during this time?

A. I believe so.

Q. So 7400 was in since September 8?

A. Yes.

Q. The next entry refers to East River. "Billy told East River can't do work." What is East River?

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A. It's an oil company in Connecticut that we -- that Trans-Spec does transportation for.

Q. Why did Trans-Spec -- I'm assuming Billy is Billy Howard?

A. Yes. Billy is the dispatcher.

Q. Why did Billy at Trans-Spec say that Trans-Spec can't do work for East River?

A. I told him he didn't have the equipment to do it now. We had too many trucks down. And to be fair with the customer and let him know that we just couldn't handle it.

Q. Skipping one entry down to where it says, "Jim at CAT said bolts were covered. Jay and Bob present." Who is Jim?

A. Jim is the service manager, Withrow.

Q. Jim Withrow?

A. Withrow, yes.

Q. Where did this conversation take place?

A. Somebody had mentioned something about bolts weren't covered or something, and I -- when we went to pick up a truck, I says, "Jim what's the story? Are the bolts covered or not?" He says, "Of course they're covered."

Q. The last entry, "Gary check for flywheel

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cracks." Who is Gary?

A. He is one of the mechanics at night.

Q. What did you ask him to do?

A. I asked him to check the trucks over there and make sure what we had, that if we had anything that was broken, because they were coming apart too frequently and so many of them.

Q. Was this an occasional request that you made of mechanics?

A. Quite often.

Q. Why?

A. Because we're trying catch them before they would disintegrate. We were trying to keep up with them, because, unfortunately, when the flywheel cracks, if you can catch it before it takes the block with it, it's less of a job. Unfortunately, most of them that crack, they take the right-hand -- the corner of the block.

Q. So this was preventative maintenance or --

A. Yes.

Q. On September 30, 2004, it says "7400 back to CAT, exhaust leaking." Is that the 7400 that was out in early September?

A. Yes.

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Q. And it had been repaired and it had to go back to Caterpillar for further repair?

A. That's correct. I believe this vehicle sat at Freightliner so long that we finally ended up taking it to CAT because they had an opening. They fixed it. There happened to be an exhaust leak. We had to take it back.

Q. It says "Dropped off parts for 8300."

Does that mean that 8300 was still in the shop since your September 7th entry?

A. Very possible. Obviously, they had a flywheel apart and before they put it back together, they noticed the clutch might have been bad, so we probably brought them out a new clutch. So when they were reassembling, they put the clutch in as well.

Q. Are you familiar with the repair history of Truck 6100 in early October 2004?

A. You'll have to refresh my memory.

MR. SAMITO: Why don't we mark this.

(Exhibit No. 6 marked for identification.)

Q. I show you Barton Exhibit 6, which is a four-page packet of photographs, and I'll describe the pages. One is dated October 6, 2004, one photograph on the page. There's another page that

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has two photographs dated October 8, 2004, another page that has four photographs dated October 6, 2004, and a final page with four photographs dated October 15, 2004. Do you recognize where these pictures were taken?

A. Yes.

Q. Where?

A. Freightliner in Shrewsbury, Massachusetts.

Q. Who took them?

A. I did.

Q. Where these for Truck 6100?

A. Yes.

Q. Does this refresh your memory?

A. Yes, it does.

Q. Can you describe what happened in early October 2004 regarding repair of Truck 6100?

A. I received a call from the Freightliner dealership that Al Cardoza had come out and inspected a truck and told the mechanics to put a new flywheel on it and put it back together and epoxy the block.

Subsequently, I went up there. The mechanic did not feel that this was suitable. The owner of Freightliner also was very concerned as to the fact that if they put it back together without

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replacing the block, it would just break again. But this was their instructions that they received from Caterpillar, which some squawking was done, and it was finally fixed properly by putting a new block in it and a flywheel.

Q. Who did the squawking?

A. I believe I started doing the squawking, and I believe Jay Howard did some squawking also.

Q. Who did you speak to regarding this issue?

A. I think I believe I spoke with Al Cardoza.

Q. Where did that conversation take place?

A. On the phone.

Q. What was the substance of that conversation?

A. Why are you trying to take advantage of us? The thing is warranted. You're going to put something back together and it's going to break again because you're not doing it properly.

Q. What did Mr. Cardoza say in response?

A. I don't even recall. It was a very heated discussion. Because all I know is, they fixed it properly and -- due to the diligence of the Freightliner dealership being honest with us.

Q. When you say "Freightliner," you

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consistently. I should say for the record.
A. Tri State Shrewsbury.
Q. Okay. "October 12, 2004, talked with Jim at MiltonCAT re setting up inspection. Will let me know. Maybe can be done at night." What inspection does this refer to?

A. These were the inspections for the Advantage program, the extended warranty that Caterpillar had available. The cost to us was \$55,920, and the stipulation was that every truck had to be inspected by them. There was a certain criteria it had to meet so it would be able to be basically insured or warranted with the extended warranty.

Due to our many trucks that were broken down, I had to try to make arrangements where we would have trucks available to deliver the product and have the minimal trucks in being tied up. And Jim was working this out with me, and the original plan was to do an inspection at night, but it didn't work that way.

Q. You earlier discussed language on the back of the sheet registering the serial numbers of the trucks with Al Cardoza. Do you recall when that

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conversation took place?

A. That was way back in October of 2003 when I first went there.

Q. That was in one of your first meetings with Mr. Cardoza?

A. Yes, that was at Truck Service when I first met him.

Q. That was at the very first meeting with Mr. Cardoza?

A. Yes, that's when I was introduced to him at the garage.

MR. SAMITO: I have no more questions.

MR. GRUNERT: I'm going to have a few. Just give me a minute.

REDIRECT EXAMINATION

BY MR. GRUNERT:

Q. Mr. Samito asked you about documents that Trans-Spec has related to these trucks beyond the ones that were included in Howard Exhibits 9 through 30. You referred to documents that Trans-Spec keeps at 7 Cristo Lane. What documents related to the trucks does Trans-Spec keep at 7 Cristo Lane?

A. I have no idea. Mostly mileage probably, anything to do with the way they run the office,

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receipts, payments.

Q. When you said "mileage," what did you mean by that?

A. Well, they had to keep track of mileage for fuel tax purposes. That is basically where the corporate office is.

Q. Now, what kind of records recording mileage on the trucks are kept?

A. Well, they have to claim so many miles for fuel tax purposes. I don't know exactly what kind of records are kept. There are some kind of records.

Q. Are the mileage records generated annually?

A. Couldn't tell you.

Q. But there are mileage records that record the mileage on each of these trucks on particular dates, and those are kept at the 7 Cristo Lane office; correct?

A. I don't know if they're on particular dates or if they're monthly, annually, quarterly. I really couldn't tell you.

Q. Well, whether they're monthly or annually or quarterly, they're on a particular date; it's just you don't know how many dates per year; correct?

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A. I have no idea.

Q. And the best you can do is tell me that those are mileage records?

A. I don't know what you'd call them. I'd say there has to be some kind of records so they can report their fuel use. So I would say they're mileage.

Q. Now, the receipts that you referred to that are kept at 7 Cristo Lane, what did you mean by that?

A. Let's say they buy a truck, they get a receipt; they buy a doughnut, they get a receipt. Any business gets receipts when they purchase things. So I would assume they would have receipts for items purchased, et cetera, et cetera.

Q. So at 7 Cristo Lane, there are receipts evidencing Trans-Spec's receipt of the trucks involved in this case; correct?

A. I would imagine, yes.

Q. And there are receipts there evidencing Trans-Spec's receipts of other trucks that it may have received between 2000 and 2005; correct?

A. I would imagine.

Q. And you referred to payments. What did

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you mean by payments?

A. Well, such if you paid to buy a flywheel housing, I'm sure there would be a receipt there of that.

Q. Well, so when you said "receipts" and when you said "payments," were you referring to the same type of documents?

A. Yeah, basically anything that money is expended for, I would assume you would get some type of receipt for it.

Q. All right. So stored at 7 Cristo Lane there are mileage records for each of the trucks involved in this case, receipts evidencing the receipt of the truck, of each of those 22 trucks, and then there are additional receipts evidencing parts or components for those trucks that Trans-Spec purchased; correct?

A. Parts, components, permits.

Q. Will there be things such as scale tickets or weight tickets kept at the 7 Cristo Lane location evidencing the weights that these various trucks were pulling on various occasions?

A. I really couldn't answer that question. I don't know.

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Q. Other than the mileage records and the receipts that are kept at 7 Cristo Lane, what other records related to these trucks are kept at that location?

A. Probably the fees for registration, overweight permits.

Q. I'm sorry, I missed the first one?

A. Overweight permits.

Q. Overweight permits.

A. Registrations.

Q. Bear with me here. I've seen references to overweight permits. When does a common carrier such as Trans-Spec obtain an overweight permit?

A. Every 12 months you have to have -- from the Massachusetts Department of Highways, you have a permit called an overweight permit. You also have to have an overweight permit to use the Massachusetts Turnpike. It's basically just another way of collecting money for the Commonwealth.

Q. This is Massachusetts.

A. Right.

Q. The overweight; is there a particular weight specified by the Commonwealth that if you're going to operate a vehicle on the highways of the

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
NO. 04-11836RCL

TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,
Plaintiff

vs.

CATERPILLAR, INC.,
Defendant

AUDIO-VISUAL DEPOSITION of RALPH A. LIND, JR., a witness called by and on behalf of the Defendant, pursuant to the provisions of the Federal Rules of Civil Procedure, before Heather S. Cruz, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Campbell, Campbell, Edwards and Conroy, One Constitution Plaza, Boston, Massachusetts, on Tuesday, May 10, 2005, commencing at 9:37 a.m.

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6 On behalf of the Plaintiff

7 CAMPBELL, CAMPBELL, EDWARDS & CONROY

8 By John A.K. Grunert, Esquire

9 One Constitution Plaza

10 Boston, Massachusetts 02129

11 On behalf of the Defendant

12 Also Present: William Barton, Videographer

13 In Court Technologies

14 One Constitution Plaza

15 Boston, Massachusetts 02129

16 Also Present: Joseph Howard

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INDEX DEPOSITION OF RALPH A. LIND, JR.

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EXHIBITS

Nos.	For I.D.
1 Driver's Vehicle Inspection Report dated 10/17/03	25
2 Repair Order and Invoice dated 6/3/03	28
3 Preventive Maintenance Inspection Report dated 1/27/03	28
4 A Service Sheet dated 9/18/03	29
5 B Service Sheet dated 3/07/03	30
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PROCEEDINGS

THE VIDEOGRAPHER: We are now on the record.
The date is May 10, 2005. The time is approximately 9:37 a.m.

We are located at the offices of Campbell, Campbell, Edwards and Conroy in Boston, Massachusetts. The Defendant in the case of Trans-Spec Truck Services, Incorporated, d/b/a Truck Service versus Caterpillar, Incorporated, Civil Action No. 0411836 RCL.

We will now take the audio-visual deposition of Mr. Ralph Lind. My name is William Barton of In Court Technologies, Boston, Massachusetts, and I am the videographer for this deposition. The stenographer is Heather Cruz of C.J. Reporting.

At this time the attorneys will introduce themselves for the record.

MR. GRUNERT: My name is John Grunert with the firm of Campbell, Campbell, Edwards and Conroy. I represent the Defendant, Caterpillar, Inc.

MR. SAMITO: Christian G. Samito of Donovan Hatem, LLP. I represent the deponent, Mr. Lind, and the Plaintiff, Trans-Spec Truck Service.

THE VIDEOGRAPHER: The stenographer will now swear in the witness.

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RALPH A. LIND, JR., having been satisfactorily identified by a Massachusetts driver's license and duly sworn by the Notary Public, was examined and testified as follows:

MR. GRUNERT: The parties have agreed that we're going to have the usual stipulations, except that the witness is going to read and sign the transcript. So objections except to the form of the question are reserved until the time of trial. Motions to strike are reserved until the time of trial. Notarization of the witness' signature is waived.

EXAMINATION BY MR. GRUNERT:

Q State your full name, please, sir.

A Ralph Andrew Lind, Junior.

Q Have you had your deposition taken before?

A I don't know. I don't think so. Not for this, but.

Q Have you had the misfortune on any earlier occasion to sit in a room like this with a stenographer and have attorneys question you under oath and have your testimony taken down stenographically?

A Yes.

Q What was the occasion for that?

A I don't remember.

Q Was it --

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A It was something to do with a driver a long time ago for Truck Service.

Q This was a case in which you were not a plaintiff or a defendant, you were a witness testifying in a case that somebody else had brought?

A Yes.

Q Do you remember who the plaintiff in that case was?

A No.

Q Do you remember who it was who took your deposition?

A No.

Q Were you represented by an attorney at that deposition?

A I don't remember. It was years ago.

Q What's your address?

A 2 Mason Road, Milbury, Mass.

Q Are you married?

A Yes.

Q Children?

A Yes.

Q Are you employed?

A Yes.

Q Who is your employer?

A London Taxis of North America.

Q When you go to work in the morning, where do you go?

A Sudbury, Massachusetts.

EXHIBIT

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serviceability. How easy was it to work on the truck. Because the truck is down for as long as it needs to be serviced. So the faster you can get it fixed and back on the road or serviced and back on the road is what I was concerned with.

Q Okay. Were there particular characteristics of these trucks that you were concerned with from a perspective of serviceability? Were there particular features that you told Mr. Medbery you needed on these trucks in order to make them adequately serviceable for what you knew Trans-Spec's needs were?

A As far as features, no. Component locations, yes.

Q Okay. And were there specific components that you were concerned about?

A Yes.

Q Which specific components were you concerned about?

A Battery location. Battery and cable location. Air drier. Fuel filter location. Basically all the service needs. Everything that required a basic which on the A Service Sheets. Every component that had to be checked on and serviced, I was concerned with where it was located and its accessibility to a technician.

My specifications weren't based on that sheet you got in your hand.

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Q Were there some power take-offs? How many power take-offs from the transmission on these trucks were there?

A Depended on the truck.

Q So on these 22 Sterling trucks, some of them had more power take-offs than others?

A Some had two, some only had one.

Q Do you know why some had two while some only had one?

A Because some trucks did multiple duties. They worked on dump trailer and tanker.

Q So the ones that had tanker plus dump trailer had two power take-offs?

A Yes.

Q Do you remember which trucks it was that had two power take-offs?

A No.

Q Do you remember how many of the trucks were used for those dual purposes as distinct from just delivering fuel?

A No.

Q The trucks that were equipped to handle a dump trailer, do you know about how much of their time was spent hauling aggregate or other material in a dump trailer as contrasted with hauling fuel?

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A No, I don't. I didn't dispatch the trucks so I didn't know what they were doing.

Q Were the trucks that were equipped to handle a dump trailer used for that purpose more during the warm months than during the winter months?

A Yes.

Q Were they used for that purpose principally during the warm months?

A Dump trailer, yes. Mostly in the summer.

Q Okay. My question was pretty unclear. The trucks that were equipped to handle a dump trailer, during the summer months, was hauling aggregate and other material in a dump trailer what they were mostly used for during the summer?

A Yes.

Q And then during the winter months they would be switched over to fuel delivery?

A To tanker. Yes.

Q You mentioned early on when we were talking about the documents that you prepared, you mentioned weight slips or overweight slips?

A Yes.

Q And I take it that you also filled out other paperwork for various types of permits that were necessary for

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hauling?

A Fire marshall permits. Numerous permits, yes.

Q Where were -- where would those types of documents be kept at Trans-Spec?

A Copies of them were in my desk or in my filing cabinet in my office. And the original was kept with the truck. Or a copy was with the truck and one was kept at the registry or whoever issued the permit; fire department, registry, so on.

Q As the years passed, would those various permits and slips of various types, documents, would they be stored somewhere at Trans-Spec?

A I think I only kept them for a year. Because I would copy them over for the next year and make any changes I needed to be done and then throw the other ones away.

Q So as they expired?

A Threw them away.

Q You just dump them?

A Yes. Dump the ones in the truck. I don't know if I actually got rid of the ones that I had in my office.

Q Okay. When Trans-Spec's trucks were hauling aggregate or asphalt or various materials that were hauled in the dump trailers, would scale tickets be generated in order to determine how much material had been

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delivered?

A Scale tickets you mean I generate?

Q No. No. I assume that the trucks --

A Getting back into the documents the driver had. No. I don't know what the driver had for documents other than the driver's inspection report.

Q Okay.

A I could guess, yes, but because I've seen scale houses at different locations, but I've never dealt with the scale tickets.

Q Getting back to the process of specing the Sterling trucks that were involved in this case. Did you have any discussions particularly with Mr. Medbery concerning the C-12 engines?

A I don't think so. I don't know. Maybe as far as serviceability. But I don't remember a specific conversation.

Q Did you have any conversations with him concerning the fly wheels or the fly wheel housings?

A Not that I know of.

Q In connection with the process of specing these trucks, did you have any conversations with Mr. Calderbank?

A Only as far as my recollection of Boca Raton. I don't remember any specific conversations I had with him.

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Q In connection with specing the Sterling trucks involved in this case, did you have any conversations with Mr. Cardoza from Southworth-Milton?

A Some conversations I believe.

Q What conversations did you have with Mr. Cardoza in connection with specing these trucks?

A I don't know if it was actually in specing the trucks, more as it was the ability of the engine as far as horsepower and torque ratings.

Q Tell me what you remember about the conversation or conversations you had with Mr. Cardoza in connection with these Sterling trucks.

A I don't really remember specific conversations. I know we talked about the engines. Their ability. The horsepower ratings. The torque ratings. What they were suppose to be able to do. I don't remember the actual conversations.

Q Other than the torque ratings and the horsepower ratings, what do you remember Mr. Cardoza telling you about what the engines were suppose to be able to do?

A I don't. I don't remember.

Q So what you remember of getting from him is torque ratings, horsepower?

A Uh-huh. Yes.

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1 Q And you remember that you talked with him about other
2 things, but you simply don't recall what was said?
3 A Correct. I talked to Al a lot and about many different
4 things, and I can't remember what we talked about.
5 Q Did you talk with anyone other than Mr. Cardoza from
6 Southworth-Milton during the process of specing out the
7 Sterling trucks?
8 A No.
9 Q Did you talk with anyone from Caterpillar in the
10 process of specing out these trucks?
11 A Not that I remember. No.
12 Q What discussions do you remember having with Mr. Howard
13 in the process of specing out these trucks?
14 A We talked a lot about the trucks and what he thought.
15 These trucks were suppose to be the last truck, the
16 right truck for our job. And we spent a lot of hours
17 talking about many things. Drive shafts and rear
18 axils. The engine in particular. We thought it was
19 the right engine. The cab design. The doors.
20 Mirrors. Everything. We talked about a lot of things.
21 Cruise control.
22 Q When you spoke -- when you spoke with him about the
23 rear axil, what was the discussion on that subject?
24 A Well, we had Rockwell rear axils in our Freightliners

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1 which were an all-wheel drive. They had an inter-axil
2 lock and we decided -- he decided that to go with an
3 anti-lock braking traction control system or something
4 to that effect, and it was a simple conversation as to
5 eliminating the axil lock on the Sterlings because we
6 saw what kind of damage they could do in the
7 Freightliners when the driver didn't know how to use
8 it. So specifically. And stuff like that.
9 Q What do you remember talking with him about so far as
10 the drive line was concerned?
11 A I know he chose to go with a Spicer. I believe a
12 Spicer drive line over the Rockwell drive line or the
13 Meritore drive line because of Merko Bigward's
14 recommendations.
15 Q Because of?
16 A Merko Bigward. A Meritore rep. He didn't recommend
17 his drive line. He recommended actually his
18 competitor.
19 Q And the person's name is Merko Bigward?
20 A Yes.
21 Q Is Merko Bigward the person that Jay Howard dealt with
22 in connection with choosing a Meritore transmission?
23 A Possibly.
24 Q Do you know where Mr. Bigward operates out of?

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1 A No. I don't think he's our rep anymore in
2 Massachusetts.
3 Q Did you accompany Mr. Howard to a meeting up in Saint
4 Thomas, Ontario concerning these trucks?
5 A Yes, I did.
6 Q Is that the only meeting that you attended with
7 Sterling representatives in connection with specing
8 these trucks?
9 A The only meeting. I believe it is. I don't remember
10 any others.
11 Q Apart from that meeting, did you talk with any people
12 from Sterling concerning these trucks during the
13 process of specing them?
14 A Other than Don Medbery?
15 Q Don Medbery works for Minuteman, right?
16 A Sterling. Not that I'm aware of.
17 Q How long did you spend in Ontario with Sterling?
18 A I believe we were there two days. I'm not 100 percent
19 sure.
20 Q Was anyone from Southworth at that meeting?
21 A I don't remember.
22 Q Was anyone from Caterpillar at that meeting?
23 A I don't remember. I remember me, Jay, Don Medbery and
24 I believe Dick Witcher.

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1 Q Dick Witcher.
2 A Minuteman Trucks.
3 Q Do you remember who was there from Sterling?
4 A I don't know his name. I could picture the guy but I
5 don't know his name.
6 Q Did you make any notes at that meeting?
7 A No, sir.
8 Q What was the purpose of that meeting?
9 A We were going to see the truck come off the line and
10 make any changes at the end of the line that we thought
11 would benefit serviceability of the vehicle.
12 Q So you actually saw a truck that met the specifications
13 that Trans-Spec had given Sterling, you actually saw a
14 truck of that type fully assembled?
15 A We saw a truck that they thought would meet our
16 specifications. I believe it was one of our trucks.
17 Q And did you inspect it after it came off the end of the
18 assembly line?
19 A Yes.
20 Q Did you have any changes that you requested?
21 A Yes.
22 Q What changes did you request?
23 A Air drier location. That I remember specifically. I
24 believe battery location and battery cable length.

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1 Keep going back to those because I remember those
2 specifically were one of my complaints.
3 Q Were there any other changes that were requested either
4 by you or by Mr. Howard?
5 A I don't remember any others.
6 Q Were there any particular features of the trucks that
7 Trans-Spec had ordered that were discussed at that
8 meeting other than the air drier location and the
9 battery location and the battery cable length?
10 A I don't remember.
11 Q Was there any discussion of the engine?
12 A Not that I can remember. No.
13 Q Was there any discussion about the transmission?
14 A Again, not that I can remember.
15 Q Was there any discussion of the design of the frame?
16 A I don't know. Might have been. See, I was more
17 concerned with the serviceability of the vehicle. I
18 don't know what he talked about. I didn't discuss with
19 anybody anything other than the serviceability of the
20 truck and what I thought would make it easier for me to
21 service. You're getting into components, and I wasn't
22 involved in the components per se.
23 Q There was no discussion of fly wheels or fly wheel
24 housing, I assume?

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1 A Not by me.
2 Q Not that you remember?
3 A Correct.
4 MR. GRUNERT: I'm going to show him this
5 document.
6 MR. SAMITO: Is it in this packet that you
7 gave me?
8 MR. GRUNERT: Yes, it is.
9 MR. SAMITO: Do you know where, so I could
10 follow along?
11 MR. GRUNERT: Probably right on top.
12 MR. SAMITO: Okay.
13 THE VIDEOGRAPHER: Could I change tapes at
14 this time?
15 MR. GRUNERT: Sure. This is a good time.
16 THE VIDEOGRAPHER: The time is approximately
17 11:28. We are off the record for a tape change.
18 (Off the record.)
19 THE VIDEOGRAPHER: We are on the record. The
20 time is approximately 11:29.
21 Q Mr. Lind, let me show you a sample document from a
22 mound of documents that I recently obtained from
23 Minuteman Trucks.
24 As a result of your work at Minuteman Trucks,

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1 I don't remember, I didn't know that was dropped off by
2 Colony, but we did have a truck dropped off that we
3 examined and I went over that truck.
4 **Q Do you remember -- you don't remember who dropped it**
5 **off?**
6 A I don't.
7 **Q But an AT-9513 was dropped off at some point?**
8 A Yes.
9 **Q And you examined it?**
10 A Yes, I did.
11 **Q What did you think of it?**
12 A I thought it was a nice truck, one that we could use.
13 **Q Do you remember what kind of engine it had?**
14 A It had a -- I think it had a C-12 in it.
15 **Q Did you examine the engine?**
16 A Yes, I did.
17 **Q What did you think?**
18 A I thought it was, again, I thought it was the right
19 engine. It looked like -- that truck looked like
20 something we could work with. It would do what we
21 wanted.
22 **Q Did you have any complaints about the engine or the**
23 **AT-9513 that you examined?**
24 A Minor cosmetics and component locations like I stated

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1 earlier in the -- where some things were located on the
2 truck I didn't particularly care for. Air driers, oil
3 filters, the battery box locations. But as far as the
4 layout of the truck, I thought it was good.
5 **Q Who is Don Medbery?**
6 A I believe he's a salesman -- he was a salesman for
7 Minuteman Trucks.
8 **Q When did you first meet Mr. Medbery?**
9 A Sometime during the specing, potential purchasing of
10 the Sterlings.
11 **Q Did he speak to you or?**
12 A I spoke to Don quite a few times. I've even been to
13 his house and worked on some of his computers, so.
14 **Q What did Mr. Medbery tell you specifically regarding**
15 **Trans-Spec's truck purchase, outside of the computer**
16 **conversations, but focused on the truck purchase?**
17 A I only remember him saying he was the salesman for
18 Minuteman Trucks and he was potentially selling the
19 trucks to us. And he basically stopped by our lot for
20 just to let us know he was still around and -- I don't
21 remember a lot of the conversations I had with him. I
22 basically tried to avoid him.
23 **Q Did Al Cardoza make any representations concerning the**
24 **suitability of the C-12 for Trans-Spec's business**

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1 applications?
2 A Al Cardoza, yes.
3 **Q What were those representations?**
4 A As far as the C-12s, he had computer programs that
5 showed printouts of what the engine was capable of
6 doing. He could do drivability chart or graph of the
7 way that the engine would perform in certain
8 conditions.
9 **Q Was it a Caterpillar specing program that he used?**
10 A I believe it was something like that. I don't know
11 exactly.
12 **Q And did he show you printouts?**
13 A Yes.
14 **Q Did you view the printouts?**
15 A Yes.
16 **Q Did you see him input the data?**
17 A Yes. We tried -- he was in my office with the laptop
18 on numerous occasions changing transmission final drive
19 ratios, rear axle ratios, inputting different data to
20 come up with different startability of the trucks, how
21 it would take off from a dead stop with a load and
22 certain road conditions. Degraded the road and stuff
23 like that.
24 **Q Did he show you based on that program that the C-12 was**

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1 suitable for Trans-Spec's business purposes?
2 MR. GRUNERT: Object to the form.
3 **Q You can answer.**
4 A Yes.
5 **Q Did Mr. Cardoza show you that the C-12 was suitable for**
6 **80,000 gross commercial weight vehicles in New England?**
7 A 80,000 vehicles?
8 **Q 80,000 gross commercial weight vehicle.**
9 A The gross commercial weight rating, yes.
10 **Q What did Al Cardoza say about serviceability of the**
11 **trucks?**
12 A I don't remember talking to him about serviceability.
13 I knew how to service a truck, so I didn't really talk
14 to him about stuff like that.
15 **Q Well, you said earlier that that was one of the main**
16 **concerns that you had in terms of serviceability of the**
17 **engines. Did you discuss that at all with Al Cardoza?**
18 A No.
19 **Q You didn't. Okay. Do you recall what sort of data the**
20 **documents showed?**
21 A The computer printouts. It was a graph type document
22 that printed out -- had line graphs that would show --
23 on one side it had horsepower ratings and then grades
24 of the road and then the line would go -- it was just a

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1 basic graph that showed you how the truck would react
2 to certain conditions. Or the engine, not the truck.
3 **Q How long did you spend with Mr. Cardoza plugging in**
4 **these various conditions?**
5 A In total, I have no idea.
6 **Q Did it happen at one meeting or was it --**
7 A No. No. No. It was done it a few times. When Jay --
8 when Al would print something out, I would tell Jay --
9 what Al come up with and he would try different final
10 drive ratios, transmissions. We were also going for
11 fuel mileage, so axle ratios meant a lot. How the
12 truck would take off with a load, but it also had to
13 get to the right road speed. So it was a lot of
14 variables.
15 **Q Earlier you spoke about a trip to Canada and an**
16 **examination of the Sterling factory when the trucks**
17 **were being built. Did you meet any Caterpillar**
18 **employees during that visit?**
19 A I don't remember a CAT employee.
20 **Q Okay. I would like to show you a document to mark.**
21 MR. SAMITO: I'll show it to you. I don't
22 have another copy of that.
23 MR. GRUNERT: I've got the original. Do you
24 want to just refer to the deposition --

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1 MR. SAMITO: We can. Yeah. From -- I assume
2 that you had it.
3 MR. GRUNERT: Rather than mark it.
4 MR. SAMITO: That would be fine if we use
5 that.
6 MR. GRUNERT: This is an exhibit that --
7 actually several exhibits that were marked at the first
8 day of Mr. Howard's deposition.
9 THE WITNESS: Okay. Yes.
10 **Q If you could turn to the -- you'll see that the -- it's**
11 **marked Exhibit 4 Howard deposition. The first page is**
12 **a cover letter from me to Attorney Howe. If you look**
13 **at the third page. Do you recognize this document?**
14 A Yes.
15 **Q What is this document?**
16 A It's an extended -- it's a warranty basically.
17 Extended service coverage warranty document.
18 **Q When did you first see this document?**
19 A As far as the date, I don't remember when I saw it.
20 **Q But have you seen it before today?**
21 A Yeah. I signed it.
22 **Q Where did you sign it?**
23 A Down on the lower left-hand corner. That is my
24 signature.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRANS-SPEC TRUCK)
SERVICE, INC.,)
Plaintiff)

vs.

CATERPILLAR, INC.,)
Defendant)

CIVIL ACTION NO. 04-11836-RCL

DEPOSITION OF DONALD MEDBERY, a witness
called on behalf of the Defendant, pursuant to
Federal Rules of Civil Procedure 30 and 45, before
Camille Palladino-Duffy, Registered Professional
Reporter and Notary Public in and for the State of
New Hampshire, at the Marriott Residence Inn, 1
International Drive, Portsmouth, New Hampshire, on
Thursday, May 12, 2005, commencing at 10:04 a.m.

C. J. Reporting
A5 Colonial Drive, Unit No. 7
Andover, Massachusetts 01810

978-409-9090

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EXHIBIT

tabbies

Exhibit Q

26

1 for their, you know, for their software for specs,
 2 specking out a truck.
 3 Q. All right. Does Spec Pro 1.11 identify
 4 proprietary Sterling software?
 5 A. Right.
 6 Q. And you, as a salesman, had access to that
 7 software --
 8 A. Correct.
 9 Q. If you were generating a proposal --
 10 A. Uh-huh.
 11 Q. -- how would you use that software? What inputs
 12 would you make into that software?
 13 A. What inputs I would use?
 14 Q. Yes.
 15 A. Well, first of all, you just call up the standard
 16 chassis, which is the, you know, the LT 9500, and
 17 then that would automatically -- everything that
 18 was standard on the truck would pop up. And then
 19 you'd start working from there, depending on what
 20 the customer wanted as far as engines and
 21 transmissions and rear-ends and suspensions and
 22 what not, instrumentation and frames. And when
 23 you do all that, you would just input it in there
 24 and it would automatically convert it over and you

28

1 how they work.
 2 This is a proprietary Sterling software that,
 3 as you enter specifications into the software, it
 4 is designed to alert you to the fact -- or to
 5 alert you if what you have entered creates an
 6 issue as to the --
 7 A. Correct.
 8 Q. -- as to the standard --
 9 A. Just --
 10 Q. -- truck?
 11 A. If there's a non-compliance factor entered there.
 12 Q. Okay. And did you make use of that Sterling
 13 proprietary software throughout your discussions
 14 with Mr. Howard with respect to these trucks that
 15 his company ultimately bought?
 16 A. Well, we spec'd it out for what the loads are, so
 17 we would put the correct specifications in. But
 18 we would work -- but you got to remember, we also
 19 worked with the suppliers, the component
 20 suppliers, like your supplier at Caterpillar,
 21 Cummins or Detroit, and Fuller transmissions,
 22 Eaton transmissions or rear ends. And we would --
 23 the factory would allow you to do so much and
 24 that's why you have gross, you know, GCW, you

27

1 just print it out.
 2 Q. When you would input a particular piece of
 3 equipment a customer had said he wanted on the
 4 truck, would this Spec Pro 1.11 program
 5 automatically adjust any other equipment on the
 6 truck to accommodate the new specification you had
 7 input?
 8 A. Well, if you put in an engine, then you would
 9 get -- if it didn't -- it wouldn't automatically
 10 supplement the transmission or whatever. It would
 11 just tell you -- I've worked with a lot of these
 12 systems in my career so I can't specifically say
 13 what Sterling's is now because I try to blank out
 14 everything that happened at Sterling.
 15 So what would normally happen would be an
 16 asterisk or something would come up, or a message
 17 would come up and say, you know, "horsepower
 18 exceeds the limits of the standard transmission
 19 and you must pick another transmission to go into
 20 that grade," and stuff like that.
 21 Q. You've worked with a lot of these. I haven't
 22 worked with any of them.
 23 A. I understand.
 24 Q. And that's why I'm trying to understand generally

29

1 know, combined gross weight. And then if it got
 2 beyond that, then you had to get, you know,
 3 approval by engineering.
 4 Q. Did you, yourself, have any communications with
 5 Southworth-Milton in connection with Mr. Howard's
 6 purchase of these trucks?
 7 A. Well, that's a common thing that happens. The
 8 engine supplier, transmission people, whatever,
 9 whatever it was that was going to go into a truck
 10 and when an order for 22 trucks comes up, they are
 11 all around there sniffing at your door.
 12 So, I mean, they all want the business, so
 13 they come up with their recommendations and then
 14 they, obviously, you send them down to see
 15 Mr. Howard because he's buying the truck and let
 16 them all do the battle on the battle ground down
 17 there and you sit back and watch it until the
 18 smoke clears.
 19 Q. Did --
 20 A. And then you end up with a set of specs.
 21 Q. Who from Southworth-Milton do you remember talking
 22 to about this particular transaction?
 23 A. A very, very knowledgeable guy named Harry
 24 Calderbank.

30

1 Q. What do you remember Harry Calderbank telling you
2 and what do you remember telling Harry Calderbank?
3 A. I'm sure we had several conversations because we
4 didn't only talk about Mr. Howard's trucks, we
5 talked about many, many trucks. Conversations
6 always went the same way. Just want to make sure
7 that what we prepared would do the job for the
8 application. That's what our job is.
9 Q. Well, tell me in a little more detail what you
10 mean by that?
11 A. Well, if you, obviously, not only Harry Calderbank
12 was involved, you have a regional representative
13 from Caterpillar factory as Cummins does and
14 Fuller does, and all of them, and they get
15 involved when the number gets up. Even they get
16 involved sometimes when it's only onesies or
17 twosies, because you want to make sure you're not
18 getting out of the box.
19 Q. I'm going to ask you about the people from
20 Caterpillar that you dealt with in a minute, but
21 what I want to find out is your best memory of the
22 discussions that you had with Mr. Calderbank
23 concerning this transaction.
24 A. Well, Mr. Calderbank had a -- also had a

32

1 have to believe in.
2 Q. Being a salesman yourself --
3 A. I understand that. And he was very, very
4 thorough. Harry Calderbank was a very, very
5 thorough guy. He was knowledgeable and very -- he
6 just didn't want to do the wrong thing. I mean,
7 he was very conscientious. Still is to this day,
8 I imagine, if he's still alive.
9 Q. He's not in Massachusetts anymore.
10 A. Okay.
11 Q. Do you remember when he actually gave you a
12 document to look at?
13 A. Oh, yeah. I mean, I would have. I wouldn't be
14 able to do -- I would never proceed on my own just
15 because I think I'm smart, I wouldn't proceed in
16 set up a set of specifications for a customer for
17 one truck, let alone 22 without documentation from
18 the -- not only from him, but from the other guys.
19 Q. Well, just talking about Mr. Calderbank for now --
20 A. Okay.
21 Q. -- I take it he gave you a document that had data
22 in it such as fuel economy, road speed,
23 gradability, miles per hour, horsepower --
24 A. Performance.

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1 computer-generated specifications and it came
2 directly from Caterpillar. And he would run that
3 specs off so that I could input them into my
4 specifications so that we have the correct engine
5 application and for torque and horsepower for the
6 proposed application that it's going to be
7 introduced into.
8 Q. So, I take it then, that Mr. Calderbank provided a
9 document to you that contained various parameters
10 for the engines that he was talking with you
11 about?
12 A. Everything. It would be fuel economy, it would be
13 road speeds, gradability, miles per gallon, just
14 about anything you'd want to know before so that
15 you know that when you bought it, you know what
16 you got.
17 Q. Do you remember, other than fuel economy, road
18 speed, gradability, miles per gallon, what other
19 information he gave you about the engine?
20 A. Well, I can only say that every engine
21 representative, including Mr. Calderbank, was
22 always exuberant about what their engine would do.
23 It was always better than the other guys. So,
24 that's what you have to do because that's what you

33

1 Q. -- torque --
2 A. Performance capability.
3 Q. And you would then input that data into this Spec
4 Pro 1.11 --
5 A. Correct.
6 Q. -- program?
7 A. Correct.
8 Q. And how would that Spec Pro 1.11 program
9 manipulate the engine data that you were
10 inputting?
11 A. Well, the only data you put in was the engine
12 itself because in the model -- in the exact model
13 and the rating, and the Spec Pro was already
14 programmed to handle all the engines, you know,
15 handle Caterpillar's engine requirements and their
16 specifications, you know, to be presented in the
17 chassis.
18 Q. All right. So if I understand correctly then,
19 what you input into Spec Pro was, in this case,
20 C-12 engine?
21 A. Right, C-12.
22 Q. And what other information about the engine would
23 you put in?
24 A. I put in horsepower and torque.

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1 Q. And you then relied on this proprietary Sterling
2 software to determine what the various specific
3 parameters of those engines would be and how they
4 would fit in this Sterling truck overall?

5 A. Well, what it would do is, specifically, it would
6 tell you that if you wanted a 10-speed
7 transmission, it would punch out the 10-speed with
8 the torque limits in it. And if you wanted a
9 40,000 pound rear axle, it would punch out the
10 rear axle. And if you wanted the ratio, it would
11 tell you, you know, what the ratios are, you know,
12 that you are going to use, it's going to produce
13 the road speed and where the fuel economy would be
14 most efficient, and it would do the same thing --

15 These were friendly systems or software
16 systems that were compatible and they would do the
17 same thing on both ends. His would tell -- Harry
18 Calderbank's would tell you all the same things
19 that Minuteman's would tell you because
20 Minuteman -- not Minuteman -- Sterling would get
21 all that information from Cat corporate, see, and
22 they worked in conjunction with Cat corporate so
23 that they had all these compatible information
24 plugged in.

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1 covered.

2 Q. Now, did you give Mr. Calderbank a copy of more
3 than one --

4 A. Probably not.

5 Q. -- quotation that you put together?

6 A. Probably not. I think he probably had a copy of
7 the -- when I worked with him and he gave me his
8 information, I plugged the information in. When
9 it was all finalized, if he wanted a copy of it,
10 I'd give it to him.

11 Q. What if he didn't ask you for a copy?

12 A. Then I wouldn't give it to him.

13 Q. Do you remember specifically giving him any
14 specification proposals similar in type to Exhibit
15 Howard No. 2?

16 A. I would say I don't remember it now.

17 Q. So you don't know whether you actually gave it to
18 him or not?

19 A. No.

20 MR. SAMITO: Objection.

21 MR. GRUNERT: Q. Do you remember how many
22 versions of the specification proposals you put
23 together over the course of negotiating with
24 Mr. Howard to arrive at the final specifications?

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1 Q. Now, what information did you give Mr. Calderbank
2 about the specifications that you had generated in
3 connection with the transaction that Mr. Howard
4 was contemplating?

5 A. He would already have it and he would already do
6 his own research. He would present me with the
7 stuff that he printed out and he would have the
8 same information I had.

9 Q. I'm not --

10 A. So I didn't present him with any information other
11 than the fact that we have a truck and we can put
12 his engine in it and it's all accepted, and where
13 do we go from here, Harry?

14 Q. I'm not asking you about information that you gave
15 him about the engine, I'm asking you what
16 information you gave Mr. Calderbank about the
17 specifications for the truck that you had been
18 generating over the course of these many
19 iterations of quotations that you were putting
20 together on your computer?

21 A. Well, you got -- he got a copy of this. We would
22 present him a copy of this so he could understand
23 exactly what was going on, but we would discuss
24 the axles, transmissions, weights, it was all

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1 A. Several.

2 Q. Do you remember when during the negotiation
3 process with Mr. Howard whereby you came up with
4 these revised proposals? Do you remember when in
5 that process you had your meeting or meetings with
6 Mr. Calderbank?

7 A. Yeah, when Mr. Calderbank called me and said that
8 Mr. Howard was going to go with Cat engines.

9 Q. So that's when you went and had your meeting with
10 Mr. Calderbank and he gave you the --

11 A. Final specifications.

12 Q. -- specifications for the C-12?

13 A. Right.

14 Q. After that point in time, did you have any other
15 meetings with Mr. Calderbank to go over with him
16 any changes that had been made to the
17 specifications, the truck specifications?

18 A. Not that I recollect.

19 Q. Did you keep any notes of your meetings with
20 Mr. Calderbank?

21 A. They are all in the bottom of the landfill in
22 Rochester, New Hampshire. Anything to do with
23 this transaction and Minuteman is in the bottom of
24 the landfill.

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- 1 Q. So the answer is you made notes, but they have
2 been disposed of?
- 3 A. I made lots of notes. Lots of notes.
- 4 Q. Now, you said that you also interacted in
5 connection with this transaction with one or more
6 individuals from Caterpillar's regional office.
7 Do you remember who those people were?
- 8 A. Nope. It was a guy that came up from Connecticut.
9 I don't remember him. So, I usually remember all
10 those guys but, obviously, he didn't make much of
11 an impression on me, but they usually came in and
12 they blew all their smoke and then they'd leave
13 town. They'd leave the water carrying up to guys
14 like Harry Calderbank.
- 15 Q. Do you remember specifically what discussions you
16 had with the person from the Caterpillar district
17 office in connection with the transaction that you
18 were negotiating with Mr. Howard?
- 19 A. I believe the discussion would be very brief
20 because, you know, you really like to deal with
21 the local guys, but these factory guys like to
22 come in and touch base with everybody, which is
23 what their job is, but I can't remember the guy's
24 name, which is very unusual, but I can't remember

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- 1 A. Oh, I'm sure we discussed that because he's
2 checking up on the local guys. So, I mean, I'm
3 sure that all comes into the discussion.
- 4 Q. Do you remember what kind of transmission you told
5 the person from the district office was going to
6 be in the trucks?
- 7 A. No, I can't really say that I remember I told him
8 what kind of transmission would be in the trucks.
- 9 Q. Do you remember talking about how the frame of the
10 trucks was going to be designed?
- 11 A. No, because Sterling makes that determination at
12 the engineering level at the factory.
- 13 Q. When you talked with the fellow from the district
14 office, did you mostly talk to him about things
15 such as the weight and the loads that these trucks
16 were going to be carrying and items of that sort?
- 17 A. Not -- no, not, because that was normally done
18 through Harry Calderbank and he submitted that to
19 Peoria on an approval basis.
- 20 Q. I'd like you to tell me as best you can what you
21 actually remember telling the fellow from
22 Caterpillar about these trucks that you were
23 negotiating with Mr. Howard about?
- 24 A. Not anything different than what I would

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- 1 the guy's name, so I remember that he came -- on
2 this particular deal, he ended up going to the
3 dealership a couple of times and talking to the
4 owner of the company.
- 5 And then he had a visit with me, maybe once
6 or twice, but it's more or less the fact to let us
7 know at Sterling that Caterpillar wanted this
8 transaction. They wanted this deal.
- 9 Q. All right. Did you discuss things like discounts
10 on the engines or financial terms?
- 11 A. No -- excuse me. I didn't mean to interrupt. We
12 didn't deal with that. He dealt with Harry.
- 13 Q. Okay. Did you discuss with the individual from
14 the district office the detailed specifications
15 that you had put together for these trucks?
- 16 A. More than likely, but I can't recollect that.
- 17 Q. No memory?
- 18 A. You know, more than likely we discussed it with
19 every guy that contacted us regarding the
20 specifications.
- 21 Q. Would you -- do you think that you discussed with
22 the individual from the district office the type
23 of transmission that was going to be in the
24 trucks?

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- 1 ordinarily talk to the Cummins guy or anything
2 else. I know that I'm a very thorough guy, as far
3 as discussing specifications, performance, and
4 getting -- and making sure that the customer has,
5 you know, gets what he pays for.
- 6 Q. Do you remember what you told the fellow from
7 Caterpillar about the nature of Mr. Howard's
8 business?
- 9 A. I don't think I would discuss that with the guy
10 from Caterpillar.
- 11 Q. All right. In terms of performance requirements,
12 do you recall what you told the fellow from
13 Caterpillar?
- 14 A. No. No.
- 15 Q. In terms of specifications, do you know what you
16 told the fellow from Caterpillar?
- 17 A. Well, we would discuss the general specifications.
18 I mean, that's -- normally, the engine would be
19 the -- because he's the engine rep, that would be
20 the real meat of the conversation, and I can only
21 tell you this, that the C-12 was an engine that
22 they really bet their -- they really bet their
23 load on. So they were bragging that engine up
24 like there was no tomorrow.